

SENATE BILL 3313

By Haynes

AN ACT to amend Tennessee Code Annotated, Title 66,  
Chapter 11, relative to mechanics' and  
materialmen's liens, and to repeal Tennessee  
Code Annotated, Section 66-11-117.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 66-11-101, is amended by deleting  
the current language in its entirety and by substituting the following:

As used in this part, unless the context otherwise requires:

(1) "Contract" means an agreement for improving real property, written or  
unwritten, express or implied, and includes "extras" as defined in this section;

(2) "Contract price" means the amount agreed upon by the contracting  
parties to be paid for performing work or labor or for furnishing materials,  
machinery, equipment, services, plus overhead and profit, covered by the  
contract, increased or diminished by the price of extras or breach of contract,  
including defects in workmanship or materials. If no price is agreed upon by the  
contracting parties, "contract price" means the reasonable value of all work,  
labor, materials, services, equipment, machinery, overhead, and profit covered  
by the contract;

(3) "Extras" means labor performed or materials, services, equipment,  
and machinery furnished for improving real property, authorized by the owner  
and not included in previous contracts;

(4) "Furnish materials" means supply materials that:

(A) Are incorporated in the improvement;

(B) Are delivered to the site of the improvement and become normal wastage in construction operations;

(C) Are specially fabricated materials for incorporation in the improvement and, if not delivered to the site of the improvement, are not readily resalable by the lienor;

(D) Are used for the construction and do not remain in the improvement, subject to diminution by the salvage value of such material;  
or

(E) Include tools, equipment, or machinery to the extent permitted by § 66-11-102(g). The delivery of materials to the site of the improvement shall be prima facie evidence of incorporation of such materials in the improvement;

(5) "Improve" means to take any action or to engage in any activity in furtherance of an "improvement" as defined in this section;

(6) "Improvement" means constructing, erecting, altering, repairing, demolishing, or removing any building, structure, or appurtenance thereto, fixture, bridge, driveway, private roadway, sidewalk, walkway, wharf, sewer, utility, watering system, or the like, or any part thereof, upon, connected with, or beneath the surface; the drilling and finishing of a well, other than a well for gas or oil; the furnishing of any and all work and labor relating to the placement of tile for the drainage of any lot or land; the excavation, cleanup, or removal of hazardous and non-hazardous material or waste from real property; the enhancement or embellishment of real property by seeding, sodding, or the planting thereon of any shrubs, trees, plants, vines, small fruits, flowers, nursery stock, or vegetation or decorative materials of any kind; the taking down,

cleanup, or removal of any existing shrubs, trees, plants, vines, small fruits, flowers, nursery stock, or vegetation or decorative materials of any kind then existing; excavating, grading or filling to establish a grade; the work of land surveying, as defined in § 62-18-102; and the performance of architectural or engineering work, as defined in title 62, chapter 2, with respect to an improvement actually made to the real estate. As the context requires, "improvement" also means the real property thus improved;

(7) "Laborer" means any person who, under contract, of any degree of remoteness, personally performs on the site of the improvement labor for improving real property;

(8) "Lienor" means any person having a lien or right of lien upon real property by virtue of this chapter, and includes the person's successor in interest;

(9) "Owner" includes the owner in fee of real property, or of a lesser estate therein, a lessee for a term of years, a vendee in possession under a contract for the purchase of real property, and any person having any right, title or interest, legal or equitable, in real property, that may be sold under process;

(10) "Owner-occupant" means any owner of real property who, at the time such owner contracts for the improvement thereof, occupies such real property as such owner's principal place of residence;

(11) "Perform," when used in connection with the words labor or services, means performance by the lienor or by another for the lienor;

(12) "Person" means an individual, corporation, limited liability company, partnership, limited partnership, sole proprietorship, joint venture, association, trust, estate, or other legal or commercial entity;

(13) "Prime contractor" means a person, including a land surveyor as defined in § 62-18-102, a person licensed to practice architecture or engineering under title 62, chapter 2, and any person other than a remote contractor who supervises or performs work or labor or who furnishes material, services, equipment, or machinery in furtherance of any improvement, provided that the person is in direct privity of contract with an owner, or the owner's agent, of the improvement. A "prime contractor" also includes a person who takes over from a prime contractor, as defined in this subsection, the entire remaining work under such a contract;

(14) "Real property" includes real estate, lands, tenements and hereditaments, corporeal and incorporeal, and fixtures and improvements thereon;

(15) "Remote contractor" means a person, including a land surveyor as defined in § 62-18-102 and a person licensed to practice architecture or engineering under title 62, chapter 2, who provides work or labor or who furnishes material, services, equipment or machinery in furtherance of any improvement under a contract with a person other than an owner;

(16) "Single family residence" means any real property owned and occupied by no one other than the owner and the owner's immediate family;

(17) "Substantial completion" means that degree of completion of an improvement upon attainment of which the improvement can be used for its intended purpose; and

(18) "Visible commencement of operations" means the first actual work of improving upon the land or the first delivery to the site of the improvement of materials, that remain thereon until actually incorporated in the improvement, of

such manifest and substantial character as to notify interested persons that an improvement is being made or is about to be made on the land, excluding, however, demolition, surveying, excavating, clearing, filling or grading, placement of sewer or drainage lines or other underground utility lines or work preparatory therefor, erection of temporary security fencing and the delivery of materials therefore.

SECTION 2. Tennessee Code Annotated, Section 66-11-102, is amended by deleting the current language in its entirety and by substituting instead the following:

(a) Provided the lienor satisfies all applicable requirements of this chapter, there shall be a lien upon any lot or tract of real property upon which an improvement has been made by a prime contractor and any remote contractor. The lien shall secure the agreed contract price or, absent an agreed contract price, a reasonable price for the labor, materials, machinery, equipment or services provided by the lienor.

(b) The lien established by this section shall include a lien upon any lot or tract of real property in favor of any land surveyor who has, by contract with the owner or agent of the owner of the real property, performed on such property the practice of land surveying, as defined in § 62-18-102(2). The lien shall secure the agreed contract price therefore or, absent an agreed contract price, a reasonable price for those services performed by such land surveyor.

(c)

(1) The lien established by this section shall include a lien upon any lot or tract of real property upon which an improvement has been made, by contract with the owner or the owner's agent, in favor of any person licensed to practice architecture or engineering under title 62, chapter 2, for architectural or engineering services performed with respect to such improvement actually made.

The lien shall secure the agreed contract price thereof or, absent an agreed contract price, a reasonable price for the services performed by such architect or engineer.

(2) The lien provided for in subdivision (c)(1) shall attach as of the time of visible commencement of operations as provided in § 66-11-104.

(3) The provisions of this subsection (c) shall not apply to owner-occupants of one (1) family or two (2) family detached unit homes.

(d) Notwithstanding any other provision of this chapter, no lessee of real property may encumber the fee estate unless the lessee is deemed to be the fee owner's agent. In determining whether a lessee is the fee owner's agent, the court shall determine whether the fee owner has the right to control the conduct of the lessee with respect to the improvement and shall consider:

(1) Whether the lease requires the lessee to construct a specific improvement on the fee owner's property;

(2) Whether the cost of the improvement actually is borne by the fee owner through corresponding offsets in the amount of rent the lessee pays;

(3) Whether the fee owner maintains control over the improvement; and

(4) Whether the improvement becomes the property of the fee owner at the end of the lease.

(e) A lien arising under this chapter shall not include in the lien amount any interest, service charges, late fees, attorney fees, or other amounts to which the lienor may be entitled by contract or law that do not result in an improvement to the real property or are otherwise not permitted by this chapter.

(f) When the owner fails to perform his part of the contract, and by reason thereof the lienor, without his default, is prevented from completely performing his part,

the lienor is entitled to a lien for as much of the contract as he has performed in proportion to the contract price attributable to the whole, and his claim shall be adjusted accordingly.

(g) A lien for furnishing tools, equipment, or machinery arises under this chapter to the following extent:

(1) For the reasonable rental value for the period of actual use and any reasonable period of non-use taken into account in the contract; provided that the reasonable rental value and reasonable periods of use and non-use are not determinable solely by the contract; or

(2) For the purchase price of the tools or machinery, but the lien for such price only arises if the tools, equipment, or machinery were purchased for use in the course of the particular improvement and have no substantial value to the lienor after the completion of the improvement on which they were used.

SECTION 3. Tennessee Code Annotated, Section 66-11-103, is amended by deleting the current language in its entirety and by substituting instead the following:

When the contract for improving real property is made with a husband or a wife who is not separated and living apart from that person's spouse, and the property is owned by the other or by both, the husband or wife who contracts shall be deemed to be the agent of the other unless such other shall, within ten (10) days after learning of the contract, serve the prime contractor written notice of that person's objection to the contract.

SECTION 4. Tennessee Code Annotated, Section 66-11-104, is amended by deleting the current language in its entirety and by substituting instead the following:

(a) The lien provided by this chapter shall attach and take effect from the time of the visible commencement of operations.

(b) If there is a cessation of all operations at the site of the improvement for more than ninety (90) days and a subsequent visible resumption of such operations, any lien for labor performed or for materials furnished after the visible resumption of operations shall attach and take effect only from such visible resumption of operations.

(c) Nothing in this section shall affect the priority or parity of any liens as established by any section of this chapter.

SECTION 5. Tennessee Code Annotated, Section 66-11-105, is amended by deleting the current language in its entirety and by substituting instead the following:

(a) The lien shall extend to, and only to, the owner's right, title or interest in the real property and improvements thereon existing at the time of the visible commencement of operations or thereafter acquired or constructed.

(b) If any part of the real property or improvements subject to such lien is removed by the owner or any other person at any time before discharge of the lien, such removal shall not affect the rights of the lienor either in respect to the real property and improvements or to the part so removed.

SECTION 6. Tennessee Code Annotated, Section 66-11-106, is amended by deleting the current language in its entirety and by substituting instead the following:

A prime contractor's lien shall continue for one (1) year after the earlier of:

(1) The date the improvement specified in the lienor's contract achieves substantial completion; or

(2) The last date on which the lienor furnished labor, materials, services, equipment or machinery for the improvement;  
and until the final decision of any suit properly brought within that time for its enforcement.



SECTION 7. Tennessee Code Annotated, Section 66-11-107, is amended by deleting the current language in its entirety and by substituting instead the following:

All liens provided by this chapter, except those of laborers, shall be on a parity, and shall be treated pro rata; except that all liens of laborers shall be on a parity each with another, and shall have priority over all other liens created by this chapter.

SECTION 8. Tennessee Code Annotated, Section 66-11-108, is amended by deleting the current language in its entirety and by substituting instead the following:

If the contract for an improvement is made with a mortgagor, and the mortgagee has been served with written notice of the same by a lienor before the work is begun or materials furnished by that person, and the mortgagee gives written consent thereto, the lien provided by this chapter to that lienor shall have priority over the mortgage; and if the mortgagee fails to serve an objection, in writing, within ten (10) days after receipt of the notice, the mortgagee's consent shall be implied, provided that the person giving notice shall include a name and return address to which the written objection shall be served. Otherwise, the lien shall not have priority over a mortgage otherwise entitled to priority over the lien under applicable law.

SECTION 9. Tennessee Code Annotated, Section 66-11-109, is amended by deleting the current language in its entirety and by substituting instead the following:

The same rule as provided in § 66-11-108 shall apply to any other person claiming a lien not created by this chapter.

SECTION 10. Tennessee Code Annotated, Section 66-11-110, is amended by deleting the current language in its entirety and by substituting instead the following:

The lien of a judgment of a court of record shall not defeat a lien provided by this chapter, if the latter is fixed on the real property in good faith and without collusion.

SECTION 11. Tennessee Code Annotated, Section 66-11-111, is amended by deleting the current language in its entirety and by substituting instead the following:

Where the lienor's contract is in writing, and has been acknowledged, or in lieu sworn to by the prime contractor as to its execution by the owner, it may be recorded in the lien book in the register of deeds of the county where the real property, or any part affected, lies. In such case, for the purposes of preserving a lien provided by this chapter, as concerns subsequent purchasers or encumbrancers for valuable consideration without notice thereof, though not as concerns the owner, it shall be deemed that such persons have notice of such lien, so long as the contract, as recorded, sets forth the contract price and describes the real property to be affected with reasonable certainty.

SECTION 12. Tennessee Code Annotated, Section 66-11-112, is amended by deleting the current language in its entirety and by substituting instead the following:

(a) In order to preserve the priority of the lien provided by this chapter as of the date of its attachment, as concerns subsequent purchasers or encumbrancers for a valuable consideration without notice thereof, though not as concerns the owner, such lienor, who has not recorded such lienor's contract pursuant to §66-11-111, is required to record in the office of the register of deeds of the county where the real property, or any part affected, lies, a sworn statement of the amount for, and a reasonably certain description of, the real property on which the lien is claimed. The recording party shall pay filing fees, and shall be provided a receipt therefore, which amount shall be part of the lien amount. Such recordation is required to be done within ninety (90) days after the date the improvement specified in the lienor's contract achieves substantial completion or the last date on which the lienor furnished labor, materials, services, equipment, or machinery for the improvement, prior to which time the lien shall be

effective as against such purchasers or encumbrancers without such recordation. The owner shall serve thirty (30) days' notice on prime contractors and on all of those lienors who have served notice in accordance with § 66-11-145 prior to the owner's transfer of any interest to a subsequent purchaser or encumbrancer for a valuable consideration. If the sworn statement is not recorded within such time, the lien's priority as to such parties shall be determined as if it attached as of the time the sworn statement is recorded.

(b) Notwithstanding any other provision to the contrary, any lien acquired under contract executed on or after April 17, 1972, by virtue of § 66-11-141, may be filed within ninety (90) days after completion of the structure which is, or is intended to be, furnished water by virtue of drilling a well.

(c) The statement provided for in subsection (a) above may be in substantially the following form:

#### NOTICE OF LIEN

State of Tennessee,

County of \_\_\_\_\_, ss: \_\_\_\_\_

\_\_\_\_\_, being first duly sworn, says that \_\_\_\_\_, the Lien Claimant, furnished certain material or performed certain work or labor in furtherance of improvements to the real property hereinafter described, in pursuance of a certain contract, with \_\_\_\_\_, [the owner, prime contractor, remote contractor, or other person, as the case may be]. The first of the work or labor was performed or the first of the material, services, equipment, or machinery was furnished on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (year). The last of the work or labor was performed or the last of the material, services, equipment, or machinery was furnished on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (year), and there is justly and truly due Lien Claimant therefore from \_\_\_\_\_, [the owner, prime contractor, remote contractor, or other person, as the case

may be] over and above all legal setoffs, the sum of \_\_\_\_\_ dollars, for which amount Lien Claimant claims a lien under T.C.A. §§ 66-11-101 et seq on the real property, of which \_\_\_\_\_ is or was the owner, which is described as follows:

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\_\_\_\_\_  
Lienor

Sworn to before me and subscribed in my presence this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (year).

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[Acknowledgment]

SECTION 13. Tennessee Code Annotated, Section 66-11-113, is amended by deleting the current language in its entirety and by substituting instead the following:

Whenever materials have been furnished to improve real property and delivered to the real property by or for a lienor, and payment therefore has not been made by the owner of the real property, such materials shall not be subject to attachment, execution, or other legal process to enforce any debt due by the purchaser of such materials, except a debt due for the purchase price thereof, so long as in good faith the same are about to be applied to improve the real property; but if the owner has made payment for

materials furnished, such materials shall not be subject to attachment, execution, or other process to enforce any debt, including the debt due for the purchase price therefore.

SECTION 14. Tennessee Code Annotated, Section 66-11-114, is amended by deleting the current language in its entirety and by substituting instead the following:

(a) If for any reason an improvement is abandoned before substantial completion or, though substantially completed, materials delivered are not used for the improvement, a person who furnished materials for such an improvement that have not been incorporated in the improvement, and for which such person has not received payment, may repossess and remove such materials; and thereupon such person shall not be entitled to any lien upon the real property or improvements for the price thereof, but shall have the same rights in regard to the materials as if such person had never parted with the possession.

(b)

(1) The right to repossess and remove the materials shall not be affected by their sale, encumbrance, attachment or transfer from the site of the improvement subsequent to delivery to the site, except that the right to repossess shall not be effective as against a purchaser or encumbrancer thereof in good faith whose interest therein shall have arisen since removal from the site of the improvement, or as against a creditor attaching after such removal.

(2) The right of repossession and removal given by this section shall extend only to materials whose purchase price does not exceed the amount remaining due to the person repossessing; but where materials have been partly paid for, the person delivering them may repossess them as allowed in this section on refunding the part of the purchase price that has been paid.

SECTION 15. Tennessee Code Annotated, Section 66-11-115, is amended by deleting the current language in its entirety and by substituting instead the following:

(a) Every remote contractor shall have the lien provided by this chapter for such work or labor performed or materials, services, equipment, or machinery furnished by the remote contractor in furtherance of the improvement; provided, that the remote contractor satisfies all of the requirements set forth in § 66-11-145, if applicable, and, within the time provided for recording sworn statements set out in § 66-11-112(a), serves notice of lien, in writing, on the owner of the property on which the improvement is being made that the lien is claimed.

(b) The lien shall continue for the period of ninety (90) days from the date of service of notice in favor of such remote contractor, and until the final termination of any suit for its enforcement properly brought within that period.

(c) The notice of lien may be in substantially the form provided in § 66-11-112(c).

SECTION 16. Tennessee Code Annotated, Section 66-11-117, is repealed.

SECTION 17. Tennessee Code Annotated, Section 66-11-118, is amended by deleting the current language in its entirety and by substituting instead the following:

(a)

(1) Where the amount due is for work or labor performed or materials, services, equipment, or machinery furnished for a single improvement on contiguous or adjacent lots, parcels or tracts of land and the work or labor is performed or the materials, services, equipment, or machinery are furnished under the same contract or contracts, a lienor shall be required to serve or record only one (1) claim of lien covering the entire claim against such real property.

(2) If two (2) or more lots, parcels, or tracts of land are improved under the same contract or contracts and the improvements are not to be operated as a

single improvement, a lienor who has performed work or labor or furnished materials, services, equipment, or machinery therefore shall, in claiming a lien, apportion such lienor's contract price between the several lots, parcels, or tracts of land and improvements thereon and serve a separate notice of lien for the amount claimed against each lot, parcel, or tract of land and the improvements on such lot, parcel, or tract of land.

(b)

(1) Unless the improvements are to be operated as a single improvement, whenever more than one (1) building or unit is constructed upon or other improvement is made to a single lot, parcel or tract of land or to contiguous lots, parcels or tracts of land, the visible commencement of operations as defined in this chapter with respect to each such separate building, unit or other improvement shall not be deemed to constitute or otherwise relate to the visible commencement of operations with respect to any other building, unit or improvement on any such single lot, parcel or tract of land or any such contiguous lots, parcels or tracts of land. In connection therewith, a lienor who has performed work or labor or furnished materials, services, equipment, or machinery therefore shall, in claiming a lien, apportion the lienor's contract price between the separate buildings, units or improvements thereon as applicable and serve or record a separate claim of lien for the amount claimed against each such separate building, unit or improvement; in such event, the time prescribed in § 66-11-112 and § 66-11-115 for serving or recording notice of lien shall commence to run with respect to each such building, unit or improvement immediately upon the substantial completion of the same.

(2) Whenever a lienor has furnished work, labor, or materials, services, equipment, or machinery for improvements that are to be operated as a single improvement on a single lot, parcel or tract of land or contiguous lots, parcels or tracts of land, the lienor shall be required to serve or record only a single notice of lien covering the lienor's entire claim against such real property.

(c) Except as expressly provided in title 66, chapter 27, and notwithstanding any other provision of this chapter, a lien arising under this chapter by reason of an improvement that is part of a common interest community does not attach to the common elements, but attaches to the units as follows:

(1) If the improvement was contracted for by the association of unit owners, however denominated, the lien attaches to all the units in the common interest community for which the association acts, unless the association notifies the lienor, when the contract is made, that the lien may attach only to the unit(s) on or for the benefit of which the improvement was made; and

(2) If the improvement was contracted for by a unit owner, the lien attaches only to that owner's unit.

SECTION 18. Tennessee Code Annotated, Section 66-11-119, is amended by deleting the current language in its entirety and by substituting instead the following:

(a) Any notice of lien served or recorded as provided in this part may be amended at any time during the period allowed for serving or recording such notice; provided that such notice and amendment are served or recorded in good faith and such amendment is not shown to be prejudicial to another interested person.

(b) Any amendment of the notice of lien shall be served or recorded in the same manner as is provided for the original notice.



SECTION 19. Tennessee Code Annotated, Section 66-11-120, is amended by deleting the current language in its entirety and by substituting instead the following:

The claims secured by lien for labor done, and materials, services, equipment, or machinery furnished, shall in no case exceed the amount agreed to be paid by the owner in the owner's contract with the prime contractor.

SECTION 20. Tennessee Code Annotated, Section 66-11-121, is amended by deleting the current language in its entirety and by substituting instead the following:

(a) The proceeds of any insurance that by the terms of the policy are payable to the owner of real property improved, and are actually received by or are to be received by the owner because of the destruction or removal by fire or other casualty of an improvement on which lienors have performed labor, or for which they have furnished materials, services, equipment, or machinery shall, after the owner has been reimbursed therefrom for premiums paid by the owner, if any, for such insurance, be subject to liens provided by this chapter to the same extent and in the same order of priority as the real property would have been had such improvement not been so destroyed or removed.

(b) The proceeds of any insurance that by the terms of the policy are payable to a prime contractor or remote contractor, and actually received or to be received by such prime contractor or remote contractor, shall, after such prime contractor or remote contractor has been reimbursed therefrom for premiums paid by such prime contractor or remote contractor, if any, for such insurance, be liable for the payment for labor or materials, services, equipment, or machinery furnished and for which the prime contractor or remote contractor is liable in the same manner and under the same conditions as payments to the prime contractor or remote contractor under the contract would have been had such improvements not been so destroyed or removed.

SECTION 21. Tennessee Code Annotated, Section 66-11-122, is amended by deleting the current language in its entirety and by substituting instead the following:

This lien shall not pass to any person to whom the debt is transferred without notice of the lien.

SECTION 22. Tennessee Code Annotated, Section 66-11-123, is amended by deleting the current language in its entirety and by substituting instead the following:

The lien of another shall not be lost where any prime contractor or remote contractor has transferred or assigned the debt or charge due such lienor.

SECTION 23. Tennessee Code Annotated, Section 66-11-124, is amended by deleting the current language in its entirety and by substituting instead the following:

(a) The acceptance by the lienor of a note or notes for all or any part of the amount of the lienor's claim shall not constitute a waiver of the lienor's lien therefore, unless expressly so agreed in writing, nor shall it in any way affect the period for serving or recording the notice of lien under this chapter.

(b) Any contract provision that purports to waive any right of lien under this chapter is void and unenforceable as against the public policy of this state.

(c) Notwithstanding any other provision of this chapter, no liens are allowed under this chapter if, prior to any work or labor being provided or materials, services, equipment, or machinery furnished in furtherance of the improvement, the owner, or the owner's agent, provides a payment bond, equal in amount to one hundred percent (100%) of the prime contractor's contract price, in favor of such prime and remote contractors who provide work or labor or furnish materials, services, equipment, or machinery in furtherance of the improvement pursuant to a contract. The payment bond shall be executed with sufficient surety by one or more sureties authorized to do business in the state of Tennessee. The bond shall be recorded in the office of the

register of deeds of the county where the real property to be improved, or any affected part, lies.

SECTION 24. Tennessee Code Annotated, Section 66-11-125, is amended by deleting the current language in its entirety and by substituting instead the following:

Nothing in this chapter shall be construed to prevent any lienor under any contract from maintaining an action thereon as if the lienor had no lien for the security of the lienor's debt, and the bringing of such action shall not prejudice the lienor's rights under this chapter.

SECTION 25. Tennessee Code Annotated, Section 66-11-126, is amended by deleting the current language in its entirety and by substituting instead the following:

Liens under this chapter, except as provided in subsection (5)(a) below, shall be enforced only by the filing of an action and the issuance of an attachment in the manner as follows:

(1) For a prime contractor, the lien shall be enforced by attachment in a court of law or equity, filed under oath, setting forth the facts, describing the real property, and making the necessary parties defendant; or before a court of general sessions, where the amount of the claim is within its jurisdiction, the affidavit for the writ to contain such recitals.

(2) For a remote contractor, by attachment in a court of law or equity in like manner; or before a court of general sessions, having jurisdiction, based upon like affidavit, the writ of attachment to be accompanied by a warrant for the sum claimed, to be served upon the owner and may, within the discretion of the plaintiff or complainant, be served upon the prime contractor, or remote contractor in any degree, with whom the complainant is in contractual privity, but the owner shall have the right to make the prime contractor or remote contractor

a defendant by third-party complaint or cross-claim as is otherwise provided by law.

(3) The clerk of the court in which the suit is brought may issue the attachment writ without obtaining fiat of a judge or chancellor.

(4) The clerk of the court to whom application for attachment is made shall, before issuing the attachment, require the plaintiff, the plaintiff's agent or attorney, to execute a bond with sufficient surety, payable to the defendant(s) in the amount of one thousand dollars (\$1,000.00) or the amount of the lien claimed, whichever is less, provided that a party may petition the court for an increase in the amount for good cause shown, and conditioned that the plaintiff will prosecute the attachment with effect or, in case of failure, pay the defendant(s) all costs that may be adjudged against the defendant(s) and all such damages as the defendant(s) may sustain by the wrongful suing out of the attachment.

(5)

(A) Where a bond has been provided pursuant to § 66-11-124, §6-11-136 or § 66-11-142, an attachment on the real property shall not be necessary after such bond has been recorded, and the lien shall be enforced by an action on the bond before the circuit or chancery court, or before a court of general sessions where the amount is within its jurisdiction, filed under oath, setting forth the facts and describing the real property. Any such action shall be served upon the owner or the owner's agent, if any, and may, within the discretion of the plaintiff, be served upon the prime contractor, the remote contractor in any degree with whom the plaintiff is in contractual relation, and the surety on such bond,

but the prime contractor, any remote contractor of any degree or the surety on such bond shall have the right to make others a defendant by third-party complaint or cross-claim as is otherwise provided by law.

(B) Where a lien is enforced pursuant to this subdivision (5), or where after suit is commenced a bond is provided pursuant to § 66-11-124, § 66-11-136 or § 66-11-142, the plaintiff shall, in case of failure to prosecute such suit with effect, pay the defendants all costs adjudged against the defendants and all such damages as the defendants may sustain by the wrongful assertion of the lien.

(C) Where an action is brought pursuant to this subdivision (5), or where after suit is commenced a bond is provided pursuant to § 66-11-124, § 66-11-136 or § 66-11-142, the defendants shall retain all defenses to the validity of the underlying lien.

SECTION 26. Tennessee Code Annotated, Section 66-11-127, is amended by deleting the word “part” and by substituting instead the word “chapter”.

SECTION 27. Tennessee Code Annotated, Section 66-11-128, is amended by deleting the current language in its entirety and by substituting instead the following:

(a) If the labor, improvements or materials, services, equipment, or machinery are furnished for work done on the lands of any infant, person of unsound mind, or cestui que trust, and in excusable ignorance on the part of the prime contractors or remote contractors, of such person's rights or claims, the prime contractors or remote contractors shall have the right, after serving ten (10) days' notice on any guardian or trustee of such person, within which period satisfaction may be made, to take and remove such parts of the property on which their labor was performed, or their materials, services, equipment, or machinery or other property was used, the removal to be only of

enough to satisfy their true claim and to be without substantial injury to the property of such person as it stood prior to improvement.

(b) Or, the court, in the enforcement of a lien provided by this chapter, may order such improvement to be separately sold and the purchaser may remove it within such reasonable time as the court may fix. The purchase price for such improvement shall be paid into court. The owner of the land upon which the improvement was made may demand that the land be restored to substantially its condition before the improvement was commenced, in which case the court shall order its restoration, and the reasonable charge therefore shall be first paid out of such purchase price and the balance shall be paid to lienors and other encumbrancers in accordance with their respective rights.

SECTION 28. Tennessee Code Annotated, Section 66-11-129, is amended by deleting the language “contractor, furnisher, laborer, or mechanic” and by substituting instead the language “prime contractor or remote contractor”.

SECTION 29. Tennessee Code Annotated, Section 66-11-130, is amended by deleting the current language in its entirety and by substituting instead the following:

Upon written demand of the owner, the owner's agent, or prime contractor, served on the lienor, requiring the lienor to commence action to enforce the lienor's lien, and describing the real property therein, such action shall be commenced, or the claim filed in a creditors' or foreclosure proceeding, within sixty (60) days after service, or such lien shall be forfeited.

SECTION 30. Tennessee Code Annotated, Section 66-11-131, is amended by deleting the current language in its entirety and by substituting instead the following:

Where there are several persons entitled to the lien given by this chapter, all or any number of them may join in one (1) suit; or upon the filing by one (1) or more of the lienors of a bill for the benefit of all lienors, any other lienor may come in by petition,

under oath, without suing out a new attachment, by giving bond and security, with effect as if the attachment, if any, had been taken out by the petitioner.

SECTION 31. Tennessee Code Annotated, Section 66-11-132, is amended by deleting the current language in its entirety and by substituting instead the following:

If separate actions to enforce liens provided by this chapter are brought in the same court, they shall be consolidated; and if in different courts, the actions may, upon application, be removed into the court, if a court of record, in which the first action was instituted, and there consolidated, unless the later action be one for the benefit of all lienors, in the nature of a lien-creditors' bill, in which event earlier actions not of that nature shall be consolidated into the lien-creditors' bill, on petition.

SECTION 32. Tennessee Code Annotated, Section 66-11-133, is amended by deleting the word "adjust" and by substituting instead the word "adjudicate".

SECTION 33. Tennessee Code Annotated, Section 66-11-134, is amended by deleting the language "in which the real property lies" and by substituting instead the language "in which the real property, or any affected portion thereof, lies".

SECTION 34. Tennessee Code Annotated, Section 66-11-135, is amended by deleting the current language in its entirety and by substituting instead the following:

(a) If a lienor fails to cause the lien provided by this chapter to be released within thirty (30) days after the day on which lien has been forfeited, expired, satisfied or adjudged against the lienor in an action thereon, the lienor shall be liable to the owner for all damages arising therefrom, and costs, including reasonable attorneys' fees, incurred by the owner.

(b) The release shall be recorded in the office where the notice of lien was recorded. The fee for recording shall be the fee required for the recording of a release or satisfaction of a mortgage provided by law.

(c) For the purpose of this section, a lien shall be deemed released on the day on which the release of the lien is recorded in the proper office.

SECTION 35. Tennessee Code Annotated, Section 66-11-136, is amended by deleting the current language in its entirety and by substituting instead the following:

The owner of the property on which the improvement is made has the right to demand from the prime contractor a bond to protect the owner in case of the enforcement of a lien under this chapter by one or more remote contractors; and in the event such prime contractor is paid for the work done, or any part of it, covered by a lien provided by this chapter, then on payment by the owner to such remote contractor of the amount due, the owner shall have judgment for such amount by action on such bond in any court having jurisdiction in such cases; but the prime contractor shall have the right to contest the legality and amount of the claim of such remote contractors before the prime contractor is so held liable.

SECTION 36. Tennessee Code Annotated, Section 66-11-137, is amended by deleting the current language in its entirety and by substituting instead the following:

Any owner who procures a loan secured by mortgage or other encumbrance on certain real property, representing that the proceeds thereof are to be used for the purpose of improving such real property, and who, with intent to defraud, shall use such proceeds or any part thereof for any other purpose than to pay for labor performed on, or materials, services, equipment, or machinery furnished for, such real property, while any amount for which the owner may be or become liable for such labor or materials remains unpaid, or while any amount of which the owner has received notice of nonpayment prescribed by this chapter remains unpaid, commits a Class E felony, and shall be liable to an injured party for any damages and actual expenses incurred, including attorneys'



fees, if the damages and expenses incurred are the result of the misapplication of the loan proceeds.

SECTION 37. Tennessee Code Annotated, Section 66-11-138, is amended by deleting the current language in its entirety and by substituting instead the following:

(a) Any prime contractor or remote contractor who, with intent to defraud, uses the proceeds of any payment made to that person on account of improving certain real property for any other purpose than to pay for labor performed on, or materials, services, equipment, or machinery furnished by that person's order for, such real property, while any amount for which such person may be or become liable for such labor or materials remains unpaid, commits a Class E felony, and shall be liable to an injured party for any damages and actual expenses incurred, including attorneys' fees, if the damages and expenses incurred are the result of the misapplication of the payment.

(b) Notwithstanding the provisions of subsection (a), there is no violation of this section when:

(1) Funds are disbursed pursuant to written agreement; or

(2) The use of funds received and deposited in a business account for use on multiple construction projects is based upon the allocation of costs and profits in accordance with generally accepted accounting principles for construction projects.

SECTION 38. Tennessee Code Annotated, Section 66-11-139, is amended by deleting the current language in its entirety and by substituting instead the following:

If, in any action to enforce the lien provided by this chapter, the court finds that any lienor has willfully and grossly exaggerated the amount for which that person claims a lien, as stated in that person's notice of lien or pleading filed, in the discretion of the court, no recovery may be allowed thereon, and the lienor may be liable for any actual

expenses incurred by the injured party, including attorneys' fees, as a result of the lienor's exaggeration.

SECTION 39. Tennessee Code Annotated, Section 66-11-140, is amended by deleting the language "Such use of the proceeds" and by substituting instead the language "Use of the proceeds as".

SECTION 40. Tennessee Code Annotated, Section 66-11-142, is amended by deleting the current language in its entirety and by substituting instead the following:

(a) If a lien, other than a lien granted in a written contract, is fixed or is attempted to be fixed by a recorded instrument under this chapter, any person may record a bond to indemnify against the lien. Such bond shall be recorded with the register of deeds of the county in which the lien was recorded. Such bond shall be for the amount of the lien claimed and with sufficient corporate surety authorized and admitted to do business in the state of Tennessee and licensed by the state of Tennessee to execute bonds as surety, and such bond shall be conditioned upon the obligors on the bond satisfying any judgment that may be rendered in favor of the person asserting the lien. The bond shall state the book and page or other reference and the office where the lien is of record. The recording by the register of a bond to indemnify against a lien shall operate as a discharge of the lien. After recording the bond, the register shall return the original bond to the person providing the bond. The register shall index the recording of the bond to indemnify against the lien in the same manner as a release of lien. The person asserting the lien may make the obligors on the bond parties to any action to enforce the claim, and any judgment recovered may be against all or any of the obligors on the bond.

(b)

(1) When a prime contractor or remote contractor has provided a valid payment bond for the benefit of potential lien claimants, a copy of that bond may be recorded, in lieu of the recording of another bond, to discharge a lien asserted by such lien claimants. A copy of such bond may, at the contractor's option, be recorded with the register of deeds in lieu of the bond provided in subsection (a), to discharge such a lien. Upon recording with the register of deeds, the contractor or owner shall notify the surety executing the bond and the lien upon the property shall be discharged.

(2) The bond recorded pursuant to this subsection (b) shall:

(A) Be in a penal sum at least equal to the total of the original contract amount;

(B) Be in favor of the owner;

(C) Have the written approval of the owner endorsed on it;

(D) Be executed by:

(i) The original contractor as principal; and

(ii) A sufficient corporate surety authorized and admitted to do business in this state and licensed by this state to execute bonds as surety;

(E) Provide for payment of the lien claimant, whether such lien claimant was employed or contracted with by the person who originally contracted with the owner of the premises or by a remote contractor; and

(F) Provide for payment for extras, as defined in § 66-11-101(3), not exceeding fifteen percent (15%) of the prime contractor's contract price, if and to the extent such lien claimant is claiming extras.

(c) The register of deeds may record any bond recorded under this section and return the original to the person providing such bond.

SECTION 41. Tennessee Code Annotated, Section 66-11-143, is amended by deleting the current language in its entirety and by substituting instead the following:

(a) In order to be protected from lien claims that have not previously been recorded as provided in § 66-11-111 or § 66-11-112, the owner or purchaser of improved real property may, upon completion of the improvement, record in the office of the register of deeds in the county where the real property or any affected part thereof is located a notice of completion, or the owner or purchaser may require a person or organization with whom the owner or purchaser has contracted for the improvement to do so upon substantial completion of the improvement, and the owner or purchaser of improved real property shall simultaneously serve a copy of any notice of completion recorded by the owner upon the prime contractor.

(b) The notice of completion shall contain the following:

- (1) The legal name of the owner or owners of the land;
- (2) The name or names of the prime contractors;
- (3) The location and description of the property;
- (4) The date of substantial completion of the improvement;
- (5) A statement that a transfer of ownership of all or a part of the real property or an interest therein and encumbrance thereon, or a settlement of the claims of parties entitled to the benefits of this chapter, will not take place within ten (10) days after the date of the recording of the notice of completion; provided, that the ten-day expiration for lien claimants shall only apply to contracts for improvement to or on real property, for one-family, two-family, three-family and four-family residential units. On all other contracts for improvement to or on real

property, the expiration time for lien claimants shall be thirty (30) days after the date of the recording of the notice of completion in the register's office;

(6) The name and address of the person, firm, or organization on which parties entitled to the benefits of this chapter may serve notices of lien; and

(7) Acknowledgment by the person filing the notice, or by that person's agent or attorney.

(c) The register of deeds shall make a permanent record of all notices of completion filed in the office of the register and such records shall be available for public examination. The register of deeds shall be entitled to the fees, provided in § 8-21-1001, for the register's services in receiving and maintaining notices of completion required in this section.

(d)

(1) Any prime contractor or remote contractor claiming a lien under this chapter upon the property described in the notice of completion, who has not previously registered such person's contract as provided in § 66-11-111 or registered a sworn statement as provided in § 66-11-112 and served a copy thereof to the owner, shall serve written notice, addressed to the person, firm or organization and at the address designated in the notice of completion for receiving notice of claims, stating the amount of the claim and certifying that the claim does not include any amount owed to the claimant on any other job or under other contract.

(2)

(A) Such written notice shall be served for improvements to or on real property for one-family, two-family, three-family and four-family residential units not more than ten (10) days from the date of the

recording of the notice of completion in the register's office, and if same is not served within that time, the lien rights of the claimant shall expire.

(B) Such written notice shall be served for all other contracts for improvements to or on real property not more than thirty (30) days from the date of the filing of the notice of completion in the register's office, and if same is not served within that time, the lien rights of the claimant shall expire.

(e) Any notice of completion recorded as herein provided before substantial completion of the improvement or the demolition is void and of no effect whatsoever.

(f) The notice of completion may be in substantially the following form:

#### Notice of Completion

Legal name of owner or owners of the real property:

Names of all applicable prime contractors:

The location and description of the real property:

Date of substantial completion of the entire improvement:

A transfer of ownership of all or a part of the real property or an interest therein and encumbrance thereon or a settlement of the claims of parties entitled to the benefits of Title 66, Chapter 11 of the Tennessee Code will take place within ten (10) days after the date of the recording of this Notice of Completion; provided, that the ten (10) day expiration for lien claimants shall only apply to contracts for improvements to or on real property for one-family, two-family, three-family, and four-family residential units. On all other contracts for improvement to or on real property, the expiration time for lien claimants shall be thirty (30) days after the date of the recording of this Notice of Completion. The name and address of the person, firm, or organization on which parties entitled to the benefits of this Chapter may serve notice is as follows:

Name:

Street Address:

City:

State:                      Zip Code:

Dated this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Signature \_\_\_\_\_

(Check One)

\_\_\_\_\_, Owner

\_\_\_\_\_, Purchaser

\_\_\_\_\_, Prime Contractor

STATE OF TENNESSEE

COUNTY OF \_\_\_\_\_

Before me, \_\_\_\_\_, a Notary Public of the State and

County aforesaid, personally appeared \_\_\_\_\_, with

whom I am personally acquainted, and who, upon oath, acknowledged \_\_\_self to be of the

\_\_\_\_\_, the within named person, a \_\_\_\_\_, and that \_\_\_ as such

\_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the

purposes therein contained, by signing the name of the \_\_\_\_\_ by \_\_\_self as

\_\_\_\_\_.

Witness my hand and seal, at office in \_\_\_\_\_, this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_.

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NOTARY PUBLIC

MY COMMISSION EXPIRES:

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SECTION 42. Tennessee Code Annotated, Section 66-11-144, is amended by deleting the current language in its entirety and by substituting instead the following:

(a) Whenever, in any contract for the improvement of real property, a certain amount or percentage of the contract price is retained, that retained amount shall be deposited in a separate, interest bearing, escrow account with a third party.

(b) As of the time of the deposit of the retained funds, such funds shall become the sole and separate property of the prime contractor or remote contractor to whom they are owed, subject to the rights of the person withholding the retainage in the event the prime contractor or remote contractor otherwise entitled to such funds defaults on or does not complete its contract.

(c) Upon satisfactory completion of the contract, to be evidenced by a written release by the owner or prime contractor owing the retainage, all funds accumulated in the escrow account together with any interest thereon shall be paid immediately to the prime contractor or remote contractor to whom such funds and interest are owed.

(d) In the event the owner or prime contractor, as applicable, fails or refuses to execute the release provided for in subsection (c), then the prime contractor or remote contractor, as applicable, may seek any remedy in a court of proper jurisdiction and the person holding the fund as escrow agent shall bear no liability for the nonpayment thereof to the prime contractor or remote contractor; provided, however, that all claims,



demands, disputes, controversies, and differences that may arise between the owner, prime contractors, and remote contractors regarding such funds may be, upon written agreement of the all parties concerned, settled by arbitration conducted pursuant to the Tennessee Uniform Arbitration Act or the federal Arbitration Act, as may be applicable.

(e) In contracts to which the state of Tennessee or any department, board or agency thereof, including the University of Tennessee, is a party, interest shall be paid on such retained amounts at the same rate interest is paid on the funds of local governments participating in the local government investment pool established pursuant to § 9-4-704, for the contract period.

(f) The provisions of this section shall be applicable to the state of Tennessee, any department, board or agency thereof, including the University of Tennessee, and all counties and municipalities and all departments, boards or agencies thereof, including all school and education boards, and any other subdivision of the state.

(g) The provisions of this section shall be applicable to a contract or subcontract for the improvement of real property when the contract price in such contract or subcontract is five hundred thousand dollars (\$500,000) or greater.

(h) Compliance with this section shall be mandatory, and may not be waived by contract.

SECTION 43. Tennessee Code Annotated, Section 66-11-145, is amended by deleting the current language in its entirety and by substituting instead the following:

(a) Every remote contractor with respect to an improvement, except one (1) family, two (2) family, three (3) family and four (4) family residential units, shall serve, within ninety (90) days of the last day of each month within which work or labor was provided, or materials, services, equipment or machinery furnished, and for which the remote contractor intends to claim a lien under this chapter, a notice of nonpayment for

such work, labor, materials, services, machinery or equipment to the owner and prime contractor in contractual privity with the remote contractor if its account is, in fact, unpaid. The notice shall contain:

(1) The name of the remote contractor and the address to which the owner and the prime contractor in contractual relation with the remote contractor may send communications to the remote contractor;

(2) A general description of the work, labor, materials, services, equipment or machinery provided;

(3) The amount owed as of the date of the notice;

(4) A statement of the last date the claimant performed work or provided labor or materials, services, equipment or machinery in connection with the improvements; and

(5) A description sufficient to identify the real property against which a lien may be claimed.

(b) A remote contractor who fails to provide the notice of nonpayment in compliance with this section shall have no right to claim a lien under this chapter, except this section shall not apply to a certain amount or percentage of the contract amount retained to guarantee performance of such remote contractor.

(c) On the same date of the recording of the notice of completion, it shall be served on each remote contractor who has served the required notice of nonpayment pursuant to this section, and such remote contractor shall have thirty (30) days from such service to serve notice in accordance with the provisions of § 66-11-143. The lien rights of a remote contractor not so notified shall not be affected by such notice of completion.

(d) A notice of nonpayment provided in accordance with this section shall not be considered notice required by § 66-11-115.

(e) The notice of nonpayment may be in substantially the following form:

NOTICE OF NONPAYMENT

TO: \_\_\_\_\_ [Contractor]                      \_\_\_\_\_ [Owner]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Pursuant to Tenn. Code Ann. §66-11-145, notice is hereby given that \_\_\_\_\_  
[Lienor] has not been paid for certain labor, materials, services, equipment or machinery it  
supplied in the \_\_\_\_\_ [description of work] of the \_\_\_\_\_  
[description of project], located at \_\_\_\_\_ [description of property].  
The amount presently due and owing is \$\_\_\_\_\_. The last date labor, materials,  
services, equipment or machinery were provided in connection with the improvements was  
\_\_\_\_\_[date]. You may send any communications regarding this matter to the  
following address:

[Lienor]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Lienor

Dated: \_\_\_\_\_

SECTION 44. Tennessee Code Annotated, Section 66-11-146(a)(2), is amended by deleting the current language in its entirety and by substituting instead the following:

(2) Notwithstanding any other provision of law to the contrary, except as provided in subsection (b) hereof, on contracts to improve residential real property, a lien or right of lien upon such property shall exist only in favor of a prime contractor. No lien under this chapter, except a prime contractor's lien, shall exist upon such property.

SECTION 45. Tennessee Code Annotated, Section 66-11-146(b)(2), is amended by deleting the current language in its entirety and by substituting instead the following:

(2) When the owner of residential real property and the prime contractor are one and the same person, or such a person controls entities owning such property and general contracting business, on contracts to improve residential real property, a lien or right of lien upon such property shall exist only in favor of the prime contractor and remote contractors in contractual privity with the prime contractor. No lien in favor of the remote contractor shall exist on such real property from and after the date the prime contractor pays the remote contractor for work or labor performed or materials, services, equipment or machinery furnished by that remote contractor. No lien, except as provided in this subsection (b) hereof, shall exist upon such property under such contract in favor of a remote contractor who does the work or any part of the work, or furnishes the materials, services, equipment or machinery or any part of the materials, or puts thereon any fixtures, machinery or materials, ordered by or through such persons.

SECTION 46. Tennessee Code Annotated, Title 66, Chapter 11, is amended by inserting the following language as a new, appropriately designated section thereto:

(a) The provisions of this chapter are to be construed and applied liberally to secure the beneficial results, intents, and purposes thereof.

(b) Substantial compliance with the provisions of this chapter is sufficient for the validity of liens arising thereunder and to give jurisdiction to the court to enforce the same.

(c) Any document required or permitted to be served, recorded or filed by this chapter that substantially satisfies the applicable requirements of this chapter is effective even if it has nonprejudicial errors or omissions.

SECTION 47. Tennessee Code Annotated, Title 66, Chapter 11, is amended by inserting the following language as a new, appropriately designated section thereto:

(a) For purposes of this chapter, the name of any owner, the owner's agent, any prime contractor, any remote contractor, or any other person, their addresses, and the real property description stated in a building permit authorizing such improvement shall be presumed to be correct and, in the case of the property description, sufficient to identify the real property.

(b) If one (1) or more agents are specified on the building permit, service on a listed agent shall be deemed to be service on all the agent's principals, including those who have not separately listed an agent. If one (1) or more owners are specified on the building permit, service on the listed owner or owners shall be deemed to be service on all owners, including those not listed.

(c) For the purposes of this chapter, any notice or other document required or permitted to be served shall be served by one (1) or more of the following means:

(1) Registered or certified mail, return receipt requested;

(2) Hand delivery, evidenced by a sworn statement, properly notarized, confirming delivery; or

(3) Any other commercial delivery service that provides written confirmation of delivery.

(d) For purposes of this chapter, there is a rebuttable presumption that service is complete upon receipt by the party being served by hand delivery, on the date of mailing if served by registered or certified mail, return receipt requested or on the date of delivery to a commercial delivery service if served by that means.

SECTION 48. This act shall take effect July 1, 2006, the public welfare requiring it.